

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

PARKWAY ASSOCIATION EDUCATION)	
SUPPORT PERSONNEL, LOCAL 902/MNEA)	
)	
Petitioner,)	
v.)	Public Case No. R 88-025
)	
PARKWAY SCHOOL DISTRICT,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by Parkway Association Education Support Personnel, Local 902, of a petition for certification as public employee representative of certain clerical employees of the Parkway School District. A hearing was held on June 8, 20 and 21, 1988, in St. Louis, Missouri, at which representatives of Local 902 and the Parkway School District were present. The case was heard by State Board of Mediation Chairman Mary Gant. Upon agreement by the parties, the case was submitted for decision to employer member Rainey Crawford and employee member David Langston. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

Background: The Parkway School District serves students in a large geographic area of St. Louis County, Missouri. The district consists of four high schools, four junior high schools and 17 elementary schools. The school district is governed by the Board of Education, a six-member body elected by voters within the district. The ultimate

authority in all matters relating to the school district and its employees rests with the Board of Education. The school board formulates policies which impact on all facets of the district. Those policies apply uniformly to all district employees and include such terms and conditions of employment as hiring, termination, wages, vacations, holidays and retirement benefits. Charged with executing the school board's policies is the district's chief executive and administrative officer, the superintendent of schools, who reports directly to the Board.

The school district relies on a broad-based management system, seeking input from the community and district employees concerning school district policies. In an effort to organize this information, the superintendent has formed several groups or committees which act as conduits for information concerning district policy changes or review. Those groups include the Superintendent's Cabinet and the Central Administrative Team (CAT), which gather and discuss information concerning general issues which affect the school district as a whole. Another group, referred to by the acronym CAPSS, provides input to the superintendent concerning curriculum. Finally, the Job Evaluation Committee provides the superintendent with information concerning job classification changes.

Deputy and Assistant Superintendents: Although Local 902 argues that only the Board of Education formulates district policies, the record as a whole indicates that the superintendent, deputy superintendent, assistant superintendents and director of employee relations actively participate in district policy decisions notwithstanding the school board's ultimate authority. Serving on the various informational committees are the top echelon administrators, namely, the deputy superintendent who reports directly to the superintendent, and three assistant superintendents. The deputy and assistant superintendents, being the highest ranking administrators in the district other than the superintendent, participate in policy decisions which are recommended to the Board. Some school board decisions concerning district policies originate from a top

administrator. A draft of the proposed policy change is submitted to the Cabinet or CAT for review. The assistant superintendents agree to the proposed change or suggest modifications. The final proposal is then submitted to the Board of Education for Approval.

Not only do these administrators serve on the various informational committees and suggest policy changes, they advise the district's negotiating team during contract negotiations. The director of employee relations is the district's chief negotiator in all meet and confer sessions. Prior to negotiating sessions with union representatives, the director of employee relations meets with the Board of Education in executive session to discuss issues. In preparation for this meeting, the director meets with the assistant superintendents and asks for input concerning perceived issues and their opinions as to proposals to be made to the Board. During the actual negotiations, the director will meet with the assistant superintendents regularly before each session. The district's negotiator relies on the assistant superintendents' opinions as to how policy changes would affect their area of control from an operational standpoint.

The deputy and assistant superintendents are also charged with the overall supervision of district employees, including school principals, teachers, and building staff employees, also known as classified employees. These administrators constitute the second level of a district's grievance procedure. School district policy provides that a teacher with a complaint shall attempt to resolve the problem on an informal basis by discussing the matter with the building principal. If the problem persists, the teacher may appeal the principal's decision to the assistant superintendent, a teacher dissatisfied with the assistant's decision may appeal the ruling to the superintendent or ultimately to the Board of Education. If the grievance is filed by a classified employee rather than a teacher, the grievance procedure is much the same except that the assistant superintendent is at the third level of the grievance process.

The assistant superintendents are involved in the hiring of school principals and teachers. The district provides that all applications for employment by prospective teachers be submitted to the assistant superintendent for personnel. Concerning the hiring of principals, testimony at the hearing established that the assistant superintendents are actively involved in the hiring of principals within their department. Administrative teams made up of assistant superintendents, principals, teachers and parents interview prospective principals. After the applicants are interviewed, the assistant superintendents, along with the superintendent, decide which applicant to recommend to the school board, and make recommendations concerning salary.

The assistant superintendents are also involved in the evaluation of school principals. The assistant confers with each principals within their area of supervision at the beginning of the school year to discuss school goals and job targets. At mid-year the assistant superintendent conducts another evaluation followed by the final evaluation at the end of the school year. Those evaluations are used in determining whether the principal receives a merit increase.

Concerning discipline and the termination of teachers and principals, the assistant superintendents again play an active role. If a complaint results in a letter of warning or reprimand to a teacher from the superintendent, the assistant superintendent will counsel the offending party. Should a problem with a teacher be so serious as to merit termination, the teacher's principal will contact the assistant superintendent. The assistant superintendent then meets with the assistant superintendent of personnel, director of employee relations and the district's attorney to determine if sufficient legal grounds exist to recommend termination to the Board.

The assistant superintendents also play a significant role in the staffing and reassignment of personnel throughout the district. At the beginning of the school year, the assistant superintendent meets with the principals and assistant principals to discuss the allocation of teachers at the various schools. Changing enrollment or needs often

necessitates the transfer of a teacher from one school to another. In some cases a teacher will voluntarily be reassigned to another school. If no volunteers are forthcoming the affected principal will ask that a teacher be transferred. If there is a dispute concerning the reassignment of the teacher, the assistant superintendents meet together with the director of employee relations and director of school operations in an effort to settle the dispute.

Four of the secretarial positions contested by the parties in this case are the executive secretaries assigned to the deputy superintendent and three assistant superintendents. The executive secretaries to the deputy and assistant superintendents perform routine secretarial tasks which include typing correspondence used by the Central Administrative Team (CAT) when preparing for labor negotiations. The secretaries are required to prepare documents relating to the district budgeting and operating information to be used by the district in formulating bargaining positions.

The executive secretaries also type documents generated from grievances and have access to negotiation proposals sent from the director of employee relations to the assistant superintendents. They are responsible for typing all informational committee information that is submitted to the school board in executive session. Further, the record as a whole indicates that executive secretaries have access to material pertaining to contract negotiations with union representatives.

Personnel Department Secretaries. Also contested as being confidential employees are the four secretaries assigned to work in the personnel department. The parties have stipulated that the secretary assigned to the assistant superintendent for personnel and the director of employee relations shall be excluded from the bargaining unit as being confidential. The record is clear that all decisions concerning personnel matters are funneled through the assistant superintendent of personnel and the superintendent of schools. All hiring and firing, whether the recommendation comes

from a principal, manager, coordinator, or director, must be channeled through the personnel office.

The school district's evaluation system emanates from the personnel department. The evaluation forms are preprinted and uniformly set forth the criteria by which the lower level administrators and supervisors evaluate their employees. The complete personnel file for all district employees is maintained at the personnel department. The evidence as a whole indicates that the secretaries in question have access to those files.

The personnel secretaries work in close proximity to the director of employee relations who, as stated above, is the district's chief negotiator during the bargaining sessions. During negotiations, all secretaries in the personnel department must work as a team to provide the necessary secretarial support. Therefore, not only do these secretaries have access to and type documents concerning grievance procedures and employee terminations, they also assist in typing documents pertinent to the formulation of the district's collective bargaining strategy.

Managers, Directors and Coordinators: The parties also contest 14 employees classified as secretary specialists or central office secretaries. They are the secretaries to the following district employees:

- Manager of Food Services
- Director of Community School
- Director of Library/Media
- Director of Data Processing
- Coordinator of Reading Services
- Manager of Purchasing
- Coordinator of Early Childhood
- Manager of Transportation
- Director of Facilities (Manager of Security)
- Coordinator of Computer Education
- Manager of Maintenance
- Coordinator of Gifted/Talented
- Manager of Buildings and Grounds
- Coordinator of Foreign Language as Second Language

The managers, directors and coordinators can be described as the department head of their respective area of responsibility. For the sake of convenience, they will be referred to in this discussion as administrators or second level administrators.

These administrators are not directly involved in bargaining negotiations for the district. None of the administrators participate on the Central Administrative Team (CAT). However, they do serve on the Superintendent's Cabinet and the CAPSS group. The administrator who serves on the Cabinet or the CAPSS group is elected to that position by his or her peers. Unlike the superintendent, assistant superintendents, and other top administrators, the manager, director or coordinator that serves on the Cabinet or CAPSS group does so on a rotational rather than permanent basis.

These second level administrators are generally charged with the day to day operation of their respective department. As the head of the department, the administrators assign employees under their supervision to their respective work areas. The administrators are also involved in the hiring of new employees within their department. An administrator with a job opening generally advises the personnel department of the employee vacancy. The prospective employee is channeled to the administrator in question for an interview. The administrator then advises the personnel department concerning the result of the interview by completing a form provided by the personnel department. The personnel department informs the job applicant if he or she has been hired. The personnel department, working within the limits established by the Board of Education, sets the new employee's salary.

The second level administrators have the authority to reprimand employees under their supervision. Should a problem arise with an employee, the administrator will often confer with the employee and discuss the employee's poor performance. If improvement does not result, the administrator may issue a letter of reprimand, suspend

the employee for up to five days, or recommend termination. All decisions made by the manager, coordinator or director may be appealed to a higher level and, ultimately, to the Board of Education.

The administrators have some discretion as to wage increases for their employees. In 1987, for instance, the Board of Education determined that wage increases were warranted. The Board, through the personnel department, issued a directive that the employees within each department were to receive a wage increase from three to seven percent, with the average overall increase not to exceed five percent. Some administrators were allowed to use their discretion as to which employees would receive wage increases. The administrators based their decision generally on the employees' job performance and seniority. There is no evidence to indicate that the administrators played any part in deciding the wage increase guidelines, or in deciding whether the wage increase should be given.

The secretaries assigned to work for these administrators perform routine secretarial tasks such as typing, answering telephone calls, and sorting mail. In their jobs, they may be called upon to type reprimands, evaluations, and any documents generated by a grievance procedure. Also, the secretaries generally have access to the personnel files in their administrator's office. However, there is no evidence in the record that the secretaries assigned to the directors, coordinators or managers, open correspondence or type documents that pertain to their supervisor's involvement with the CAPSS informational group or any other labor relations materials.

Principals, Associate and Assistant Principals: There are 48 contested secretaries that are assigned to either a school principal, an associate principal or an assistant principal. Twenty-seven of the secretaries are assigned to either a secondary or elementary school principal. Three secretaries are assigned to an associate principal

at a high school, and the remaining 18 secretaries work for assistant principals at either the junior high or senior high school level. At the hearing, five witnesses testified concerning the duties of these principals and their secretaries. They included a senior high school principal, an elementary school principal, an associate principal and a secretary from an elementary school and a high school principal's secretary.

The principals are responsible for the overall operation of their respective school. A typical high school has one principal, one associate principal, two assistant principals, and two administrative interns. The principal oversees either directly or indirectly over 100 teachers, a principal's secretary, five secretaries who serve other administrators within the school, and six secretaries who assist the teaching staff. The elementary school principal, on the other hand, oversees a much smaller number of teachers, and approximately six secretaries including the secretary assigned to the principal.

The principal's function in the hiring of new employees is similar to that of the directors, coordinators and managers. Should a position become available or should an additional position be needed because of increased school enrollment, the principal notifies the personnel department of the position. After the job vacancy is advertised, the personnel department submits to the principal resumes of prospective employees. After interviewing the applicants, the principal recommends to the personnel department that a certain applicant be hired. Generally, the personnel department follows the principal's recommendation. However, the personnel department makes all decisions concerning salary and benefits.

The principals, associate principals and assistant principals evaluate the teachers and secretaries concerning their job performance. At the high school level, the evaluations are divided between the principal, associate and assistant principals, with each person evaluating approximately 25 to 30 teachers. These principals observe

teachers in the classroom and maintain their evaluation in the personnel file of the employee kept at the respective school. All evaluations are prepared on preprinted forms provided by the personnel department. Testimony at the hearing indicated that the elementary school principal did all evaluations by hand, whereas the secondary principal's evaluations were typed by his secretary.

The principals are involved with the first level of the grievance procedure as described in more detail on page four above. Any decisions made by the principal can be appealed to the next level. There is no conclusive evidence that the principal has the authority to suspend an employee, although the principals generally do have the authority to issue written reprimands to employees.

The principals, similar to the directors, coordinators and managers, were issued directives through the personnel department that their employees were to receive a wage increase from three percent to seven percent. The principals, basing their decision on job performance, attendance and seniority, decided what the wage increase would be for the involved employees. Similarly, the personnel department ordered that a number of employees be laid off. The principals, using the guidelines provided by the personnel department, determined which employees were to be dismissed, again based largely on job performance, attendance and seniority. Some principals faced with a reduction in their secretarial staff used their school-based management fund to retain some of their employees. This fund, established by the district, allows the school principal a certain amount of discretion in staffing in that a small percentage of the individual school budget is set aside to allow a principal to hire additional staff or purchase needed equipment.

The principals' role in the negotiation process is similar to that of the directors, coordinators and managers. A principal from both an elementary school and high

school serve on the Superintendent's Cabinet. One principal is on the CAPSS committee. These principals serve on a rotational basis rather than permanently as do the assistant superintendents. The principals on the informational committees provide input concerning how labor proposals would affect the day to day operation of their school.

No evidence was presented that would indicate that the principal's secretaries assist the principal in his or her duties on the informational committees. To the contrary, one secretary testified that although her principal was on the Superintendent's Cabinet, she had never seen any documents concerning labor negotiations nor did her principal ever speak to her concerning such matters.

The secretaries assigned to work for the principals, associate principals and assistant principals perform routine secretarial tasks such as sorting mail, answering the telephone, and typing various correspondence, including documents relating to evaluations, grievances and reprimands. However, there is no evidence that at any time have the secretaries assigned to a principal read or typed documents concerning collective bargaining, strategy or recommendations made by a principal to the informational committees.

CONCLUSIONS OF LAW

Local 902 has petitioned for certification as the exclusive employee representative of approximately 230 clerical employees of the Parkway School District. Prior to the hearing, the parties stipulated that the secretaries to the superintendent of schools, the assistant superintendent of personnel, and the manager of employee relations, are to be excluded from the appropriate bargaining unit as being confidential employees. In its brief, the school district withdrew its objection to the inclusion in the bargaining unit of the secretary to the director of school/community relations and the

eight store clerks. Remaining in dispute are approximately 70 employees. The secretaries in question are the secretaries to the assistant superintendents (four), personnel office secretaries (four), secretaries to the directors, managers and coordinators (14), and those secretaries assigned to the school principals, associate principals, and assistant principals (48).

The school district argues that the above listed employees should be excluded as being confidential employees to district personnel who formulate, determine and effectuate district policies in the field of labor relations. For the reasons set out below, the Board finds that the four secretaries assigned to the deputy and assistant superintendents and the four secretaries assigned to the personnel office are in fact confidential employees to be excluded from the appropriate bargaining unit. However, the Board further finds that the 14 secretaries to the directors, managers, and coordinators, as well as the 48 secretaries assigned to the school principals, associate principals, and assistant principals, are not true confidential employees and consequently must be included in the bargaining unit.

The school district contends that the secretarial employees in question are confidential and therefore are not "employees" within the meaning of Section 105.525, RSMo 1978. Although the term "employees" is not clearly defined by statute, this Board, along with Missouri appellate courts, has held that the legislature did not intend for all employees in the public sector to be considered employees within the meaning of the statute. See MNEA v. State Board of Mediation, 695 S.W.2d 894 (Mo. 1985). The Board must exclude from any appropriate bargaining unit those employees whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees. Golden Valley Hospital District v. State Board of Mediation, 559 S.W.2d 581 (Mo.App. 1977).

This Board has consistently excluded confidential employees as not being "employees" within the meaning of the statute. See MNEA v. Belton School District, Public Case No. 81-015 (SBM 1982). In International Association of Fire Fighters v. Riverview Fire Protection District, Public Case No. R 87-017 (SBM 1987) the Board readopted the labor-nexus test as used by the NLRB to be used in determining whether an employee is in fact a confidential employee. That test requires that an employee be considered a confidential employee if that individual assists and acts in a confidential capacity to a person who formulates, determines or effectuates management policies in the field of labor relations.

In order to ascertain whether a person is a confidential employee, two determinations must be made under the labor-nexus test. First, the person for whom the employee works must initially be found to formulate, determine and effectuate labor relations policy. Secondly, should the first test be met, the question shifts to the duties of the particular employee, in this case the secretaries, whose inclusion in the bargaining unit is disputed. To be excluded, the secretary must assist and act in a confidential capacity to a person who formulates, determines and effectuates labor relation policy. An application of this test clearly demonstrates that the four secretaries to the deputy and assistant superintendents and the secretaries assigned to the personnel office are confidential employees to be excluded from the unit.

The evidence adduced at the hearing establishes that the deputy superintendent and the assistant superintendents are managerial employees who formulate, determine and effectuate district policy in respect to labor relations. Local 902's assertion that only the Board of Education formulates and determines district policy ignores the significant role played by these top administrators in the decision making process of the Board of Education. The deputy and assistant superintendents serve, on a permanent basis, on

the various informational committees that suggest policy changes to the superintendent who makes recommendations to the Board of Education.

Important also in the Board's finding that the deputy and assistant superintendents are managerial employees so as to satisfy the first test of the labor-nexus test is that these top administrators actively participate in the negotiation process involving the district and the labor unions. The district's chief negotiator, the director of employee relations, meets with the deputy superintendent and each of the assistant superintendents to discuss their opinions concerning proposals to be made to the Board of Education. While negotiations are in progress with the unions, the chief negotiator meets with the assistant superintendents regularly to discuss proposals.

Without question, the deputy and assistant superintendents constitute the upper echelon of the district's management team. They are significantly involved in the hiring, transfer, assignment, evaluation and promotion of other district employees. This authority, coupled with the active participation in the formation of the district's labor relation policies, clearly substantiates the Board's finding that the deputy and assistant superintendents are persons who formulate, determine and effectuate district labor relations policy.

With the first test being met, the focus becomes whether the four secretaries assigned to the deputy superintendent and three assistant superintendents actually assist and act in a confidential capacity to the person to whom they are assigned. The four secretarial positions, classified as executive secretaries, perform routine secretarial tasks. These tasks include the preparation of documents relating to the district budget and operating information used by the district in formulating bargaining strategy. Further, the secretaries have access to the negotiation proposals sent from the director of employee relations. Additionally, each of the secretaries are responsible for typing

documents emanating from the informational committees which are submitted to the Board of Education as a part of the policy-making process. Accordingly, the executive secretaries assigned to the deputy superintendent and three assistant superintendents must be considered confidential in that they do assist and act in a confidential capacity to persons who formulate, determine and effectuate management labor relations policies.

Similarly, the four secretaries assigned to the personnel department must be considered confidential employees. These secretaries assist the assistant superintendent of personnel and director of employee relations who must be considered managerial employees who deal directly with labor relations matters. The record plainly indicates that all decisions concerning personnel are routed through the personnel department. In performing their routine secretarial functions, the secretaries have access to all files concerning employee evaluations, terminations and grievance procedures. Further, these secretaries assist in preparing the necessary documents used in preparation and during labor negotiations. Accordingly, the four secretaries assigned to the personnel department must be considered confidential employees in that they do assist and act in a confidential capacity to persons who formulate, determine and effectuate management labor relations and policies.

The decision concerning secretaries to the managers, directors and coordinators, as well as the secretaries to the various principals, is more troublesome. Nevertheless, an application of the labor-nexus test persuades the Board that these secretaries are not confidential employees who must be excluded from the bargaining unit.

The school district ably argues that the managers, directors, and coordinators, and the various school principals, are persons who formulate, determine, and effectuate

the district's labor relation policy. In support of its position the district underscores the authority these administrators have in the hiring, evaluation, and assignment of subordinate employees. Without question, these second level administrators and principals are supervisors that exercise considerable authority over other employees within their respective department of school. However, the Board finds there is insufficient evidence to conclude these persons formulate and determine the district's labor relations policy. Because of the enormous size of the district, the Board of Education has centralized the management of the district through the personnel department. The second level administrators and principals must work within strict guidelines established by the school board through the personnel department. The personnel department oversees and must approve any decision made concerning the hiring, evaluation, or termination of other employees. Also, any decisions concerning wage increases or staff reductions, emanate from the board through the personnel department.

An additional and perhaps more important consideration in the Board's finding that these second level administrators and principals do not formulate or determine the district's labor relations policy is their limited involvement with the labor negotiation process. No individual manager, coordinator, director or principal serves on the Central Administrative Team (CAT). Similarly, no individual second level administrator or principal serves on the Superintendent's Cabinet or CAPSS committee. Instead, they serve on a rotational basis and are elected by their peers. The record as a whole indicates that the involvement of a manager, coordinator, director or principal, is limited to somewhat informal discussions as to how a particular proposal would affect the day to day operations of the respective department or school. The persons who actually

formulate and determine school district policies are the superintendent, deputy and assistant superintendents, and the director of employee relations.

Even assuming *arguendo* that the first requirement of the labor-nexus test is met, that is that the managers, directors, coordinators and principals are persons who formulate, determine and effectuate labor relations policy, the Board is not convinced that the secretaries in question assist and act in a confidential capacity to those persons. The district contends that the secretaries in question assist and act in a confidential capacity in that they type evaluations and grievances and have access to the employee's personnel files. However, as argued by Local 902, the NLRB has ruled that the secretaries should not be excluded as confidential employees even though they have access to personnel files [Eisenberg v. Honeycomb Plastics Corporation, 125 LLRM 3257 (1987).], have access to grievance records [California Inspection Rating Bureau, 215 NLRB 780 (1974)], or type employee reprimands. [ITT Grinnell Corporation, 2122 NLRB 734 (1974)].

The above cited cases appear to follow the underlying rationale of the labor-nexus test. In NLRB v. Hendricks Rural County Electric Membership Corporation, 454 U.S. 170 (1981), the United States Supreme Court approved as constitutional the use of the labor-nexus test in excluding confidential employees from bargaining units in the public sector. In so holding, the Court alluded to the underlying purpose of the labor-nexus test, that is:

Management should not be required to handle labor relations matters through employees who are represented by the union with which the company is required to deal and who in the normal performance of their duties may obtain advance information of the company's position with regard to contract negotiations, the disposition of grievances, and other labor relations matters. Hendricks, supra, at 179 quoting Hoover Company, 55 NLRB 1321 (1944). (emphasis added)

Consistent with this rationale, this Board finds that the secretaries in question are not confidential employees who must be excluded from the bargaining unit. That these secretaries type letters of reprimand and employee grievance decisions is not sufficient for the Board to conclude that they assist and act in a confidential capacity to their managerial employee. There is no evidence that these secretaries type, read or discuss any matters in advance concerning the district's labor relation policies. They do not assist in preparing documents that are used in the formulation of the district's labor negotiations. In view of the foregoing, the Board finds that the secretaries assigned to the directors, coordinators and managers, and principals are not confidential employees in that they do not assist and act in a confidential capacity to persons who formulate, determine and effectuate the district's labor relation policy.

DECISION

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows:

secretary to director of schools/community relations; secretaries to managers, directors, and coordinators; secretaries to principals, associate principals and assistant principals; store clerks, school secretaries, staff secretaries, clerk-typists, receptionists, library clerks, library aides, staff printing secretary/clerks and other secretarial, clerical personnel exclusive of executive secretaries, central office secretaries, the secretaries assigned to the superintendent of schools, the assistant superintendent of personnel, and the manager of employee relations.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees

It is hereby ordered that the School District shall submit to the Chairman of the State Board of Mediation, as well as to Local 902 within 14 days from the date of receipt of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

PARKWAY ASSOCIATION EDUCATION)	
SUPPORT PERSONNEL PA-ESP, LOCAL)	
902/MNEA,)	
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Petitioner,)	
v.)	Public Case No. R 88-025
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PARKWAY SCHOOL DISTRICT,)	
)	
Respondent.)	

DISSENTING OPINION BY RAINEY J. CRAWFORD

Now comes the dissenting opinion -- while I agree with the majority decision of my colleagues that (1) four secretaries to Deputy and Assistant Superintendents and (2) four secretaries in the Personnel Department are confidential employees, I do, however, find merit in Respondent's objection that, (1) fourteen secretaries to Managers, Directors, and Coordinators and (2) forty-eight secretaries to Principals, Associates, and Assistant Principals should not be included employees because they serve in a "confidential" capacity.

There is abundant evidence in the record to support Respondent's objections that the secretaries in question should be properly classified as "confidential" based on the Nexus test used by NLRB

In the case (Missouri National Education Association v. Missouri State Board of Mediation, 695 S.W. 2nd 894, 899 (Mo Banc. 1985)) the issue of confidential employees -- secretaries was addressed. The instant cases circumstances, facts, and documentation from testimony are equivalent to that presented in said case reviewed by the Missouri State Board of Mediation, Circuit Court and Supreme Court. Notwithstanding the Missouri Board's broad policy in 1985 used in determining the issue

of "confidentiality", I concur with Respondent's position that "even using the more restrictive test "Labor Nexus" for determining whether an employee is to be considered confidential, there is enough documentation within the record that clearly warrants excluding the secretaries in question. Although the Missouri Supreme Court did not expressly use the Labor Nexus test, the decision and process for reaching said decision is consistent with the principles of Labor Nexus test used by NLRB.

The Supreme Court affirmed that the State Board of Mediation correctly concluded that "four secretaries assigned to administrative office of school district who occupied positions of trust with Superintendents and members of Board of Education primarily responsible for developing district's labor relations stratagem were "confidential employees" properly excludable from bargaining unit V.A.M.S. (105.510)." The Supreme Court also affirmed that:

State Board of Mediation was correct in concluding that secretaries assigned to principals and assistant principals were "confidential employees" who were properly excludable from bargaining unit, considering that principals and assistant principals are sole representatives of school district contact and are indispensable in effectuating labor relations policies of the district, and that secretaries worked closely with principals in all labor relations matters and occupied positions of trust upon which principals had to rely. V.A.M.S. Section 105.510.

The Court's decision and process for reaching said decision very strongly substantiates Respondent's position that even using the labor nexus test secretaries in question would be found to be "confidential."

The Board also properly concluded that the secretaries assigned to the individual principals and assistant principals are "confidential" employees. The principals of the District have participated to a limited extent in the bargaining during meetings held for the purpose of negotiating teachers' salaries has included a principal as one of its members.

Moreover, the principals and assistant principals are the sole representatives of the district with whom the teachers and other school personnel have daily contact and are indispensable in

effectuating the labor relations policies of the District. The principals and assistant principals are required to evaluate the performance of teachers and recommend whether particular teachers should be retained by the District. The duties of the principals and assistant principals also include reviewing grievances filed by teachers and initiating disciplinary action against teachers.

The secretaries work closely with the principals in all labor relations matters and occupy a position of trust upon which the principals must rely. In the course of performing their duties, the secretaries are privy to all correspondence between the principals and the administration and the principals and other teachers, and have access to personnel files which are considered highly confidential. Based on the record of this case, we conclude that by virtue of the nature of their responsibilities and their access to confidential information affecting the employer-employee relationship, each of the eight secretaries assigned to an individual principal or assistant principal is a "confidential" employee properly excludable from the bargaining unit.

The duties of secretaries in question are consistent with and equivalent to the duties of secretaries reviewed in cited case (MNEA v. State Board of Mediation 1985).

The secretaries assigned to the individual principals each perform virtually identical tasks. The duties of these secretaries include: maintaining student attendance records; enrolling new students; answering the telephone; and typing correspondence and performing general secretarial duties for the principals, assistant principals, and teachers. In addition, the secretaries are responsible for contacting substitute teachers when the need arises and have considerable discretion in determining which substitute teachers will be selected from a list prepared by the central administrative office. The secretaries also type teacher performance evaluations prepared by the principals and assistant principals. The performance evaluations provide a basis upon which the principals and assistant principals determine whether to recommend that the District continue to employ particular teachers. Statements prepared by the principals and assistant principals relating to formal grievances filed by teachers are also typed by the secretaries. The secretaries have access to portions of the teachers' personnel records which are maintained at the schools. The personnel files retained at the schools contain copies of all performance evaluations, documents pertaining to the disposition of formal grievances filed by teachers, "personal comments" made by a principal or assistant principal about particular teachers regarding such matters as chronic tardiness, and records of disciplinary action taken against teachers. The personnel files are considered highly confidential and, ordinarily,

the only persons with access to them are the principals, assistant principals and secretaries.

Based on long-standing NLRB precedent which defines a confidential employee as one who assists in a confidential capacity a person who formulates, determines and effectuates policy in regard to labor relations, I reaffirm Respondent's position that "even under the labor-nexus" test, the secretaries in question should be excluded as confidential employees. Testimony in the instant case of the duties of (1) Managers, Directors, and Coordinators, (2) Principals, Associates, and Assistant Principals and (3) secretaries in question, confirm that the secretaries do in fact act in a confidential capacity as defined by NLRB and by the case as cited in Missouri National Education Association v. Missouri State Board of Education (1985).

As stated in J. Powells opinion NLRB v. Hendricks Cty. Rural Electric Corp. 199:

The "confidential employee" exclusion and the labor nexus which the Board insists upon must be viewed as part of this larger effort to keep the line between management and labor distinct. Certainly employees with knowledge of sensitive labor relations information or "who formulate, determine, and effectuate management policies in the field of labor relations," fall on the management side of the line and should be excluded from the Act. But useful as it may be in identifying employees who are allied to management, the "labor nexus" test is but a means to this end. By its rigid insistence on the labor nexus in the case of confidential secretaries, the Board, and now this Court, have lost sight of the basis purpose of the labor-nexus test itself and of the fundamental theory of our labor laws. Thus, it makes little sense to exclude "expeditors", "assistant buyers", and "employment interviews" as managerial but include within the rank and file confidential secretaries who are privy to the most sensitive details of management decision-making, who work closely with managers on a personal and daily basis, and who occupy a position of trust incompatible with labor-management strife. To include employees so clearly allied to management within the ranks of labor does a disservice to management and labor alike.

Date January 24, 1989

/s/ Rainey J. Crawford
Rainey J. Crawford